IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1754 OF 2004

Dhananjay Sukhdev Sal Vithal .. Petitioner

V/s

Vithal Shikshan Va Sanshodhan Sanstha & Ors. .. Respondents

Mr.V.B. Naik for the Petitioner.

Mr.S.S. Patwardhan for Respondents No.5 and 6.

CORAM : D.G. KARNIK, J.

DATE : 24TH APRIL 2007

P.C. :

1. Heard.

2. By this petition, the Petitioner takes exception to the judgment and order dated 24th December 2003 passed by the III Additional District Judge, Pandharpur allowing Misc. Civil Appeal Nos.158 and 159 of 2000.

3. The Respondent No.1 is a Public Trust and the Respondents No.3 to 6 are its Trustees. The Petitioner also claims to be a Trustee and President of the Respondent No.1 Trust. The Respondents No.2 and 7 also were the Trustees of the Respondent No.1 Trust, but are stated to have resigned as Trustees. The Respondents

No.8 to 10 claim to be beneficiaries and persons interested in the Trust.

4. The Respondents No.5 and 6 filed an application bearing No.1 of 2000, under section 41-E of the Bombay Public Trust Act, 1950 (for short "B.P.T. Act") before the Joint Charity Commissioner, Pune alleging that the Petitioner along with the Respondent No.7 herein were collecting money illegally on behalf of the Trust. It was alleged that the money so collected was used for personal gains and not accounted for by the Petitioner and the Respondent No.1 and, therefore, an injunction was claimed restraining them from collecting any money or donations on behalf of the Respondent No.1. The Respondents No.5 and 6 also claimed that the Petitioner and the Respondent No.7 should be restrained from obstructing them from managing the affairs of the Trust. They also prayed for an injunction restraining the Petitioner and the Respondent No.7 from entering into the property of the Trust on various grounds mentioned in the application. It appears that several interim applications were filed in the main Application No.1 of 2000 and at least two interim orders were challenged before this Court. However, the challenge herein is restricted to the impugned order dated 24th December 2003.

5. The Petitioner herein made an interlocutory application (at Exhibit-35) in the main Application No.1 of 2000 on 9th November 2000. In the said application, the Petitioner prayed that the Trustees of the Respondent No.1 Trust should be restrained from operating the bank account without the joint signature of the Petitioner. By an order dated 21st November 2000, the Joint Charity Commissioner directed that the Respondent No.1 Trust should not operate the bank account except under the joint signature of the Petitioner. He also ordered that two change reports dated 23rd January 2000 and 4th June 2000 should be heard expeditiously by the Assistant Charity Commissioner. That order was challenged before the District Court, Pandharpur in Misc. Civil Appeal Nos.158 and 159 of 2000. By the impugned order dated 24th December 2000, the learned III Additional District Judge allowed the two appeals and set aside the order of the Joint Charity Commissioner dated 21st November 2000.

6. Learned counsel for the Petitioner submitted that the additional District Judge erred in setting aside the order of the Joint Charity Commissioner. He submitted that though the order was not strictly in accordance with the powers of the Joint Charity

Commissioner in an enquiry under section 41-E of the Bombay Public Trust Act, in the facts and circumstances, his order was just, fair and equitable and, therefore, ought not to have been set aside by the District Court. He further submitted that in any event, the direction given by the Joint Charity Commissioner to the Assistant Charity Commissioner to expedite the hearing of the change reports dated 23rd January 2000 and 4th June 2000 was just and proper and within the competence of the Joint Charity Commissioner and, therefore, the District Court erred in setting aside even that direction.

7. It may be noted that the present proceeding arises out of an interlocutory application at Exhibit-35, made in an enquiry under section 41-E of the B.P.T. Act. Section 41-E of the Act reads as under:-

> **"41-E. Power to act for protection of Charities.**
>
> (1) Where it is brought to the notice of the Charity Commissioner either by the Deputy or Assistant Charity Commissioner through his report or by an application by at least two persons having interest supported by affidavit:

(a) that any trust property is in danger of being wasted, damaged or improperly alienated by any trustee or any other person; or

(b) that the trustee or such person threatens or intends to remove or dispose of that property,

the Charity Commissioner may by order grant a temporary injunction or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of such property, on such terms as to the duration of injunction, keeping an account, giving security, production of the property or otherwise as he thinks fit.

(2) The Charity Commissioner shall in such cases, except where it appears that the object of granting injunction would be defeated by delay, before granting an injunction, give notice of the facts brought to his notice to the trustee, or the person concerned.

(3) After hearing the trustee or person

concerned and holding such inquiry as he thinks fit, the Charity Commissioner may confirm, discharge or vary or set aside the order of injunction or pass any other appropriate order.

(4) In case of disobedience or breach of any injunction, any of its terms or any order passed under this section, the Charity Commissioner may apply to the Court, which may, after hearing the Charity Commissioner and the party affected, order the property of such person, guilty of such disobedience or breach to be attached, and may also order such person to be detained in jail for a term not exceeding six months. No attachment under this sub-section shall remain in force for more than one year, at the end of which time, if the disobedience of breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit, and shall pay the balance, if any, to the person entitled thereto, and thereupon, the temporary injunction granted, or any order passed, by the Charity Commissioner, under this section, if in force shall stand vacated, or as the case may be cancelled.

(5) A trustee or a person against whom the order of injunction or any other order under this section is passed may, within ninety days of the date of communication of such order, appeal to the Court against such order.

(6) The order of the Court attaching the property of such person or detaining such person in civil prison shall be a decree appealable to the High Court.

(7) The order of the Charity Commissioner shall, subject to any order of the Court or in appeal, be final."

8. The enquiry under section 41-E of the B.P.T. Act is limited. Proceedings under section 41-E of the B.P.T. Act arise where two or more persons interested in the application make an application that any property of the Trust is being wasted, damaged or improperly alienated by any trustee or any other person or that a trustee or any person threatens or intends to remove or dispose of that property. In my view, in such an enquiry under section 41-E of the B.P.T. Act, an interlocutory application of the nature of Exhibit-35

was totally uncalled for. It was beyond the scope of the enquiry under section 41-E of the B.P.T. Act. By that interim, the Petitioner claimed to be a Trustee and the President of the Respondent No.1 Trust and claimed an injunction restraining the Respondent No.1 by an order and injunction from operating the bank account without his joint signature. This was totally beyond the scope of the enquiry in the application under section 41-E of the Act made by the Respondents No.5 and 6. The allegations made by the Respondents No.5 and 6 in the main petition were that the Petitioner along with others were illegally collecting the money on behalf of the Trust and was misutilising the money so collected for personal use. Thus, the main enquiry was relating whether the Petitioner was misutilising the property of the Trust including the money of the Trust. As the Petitioner has denied these allegations, the truth or otherwise of the said allegations would have to be decided in the enquiry under section 41-E of the Act. In such an inquiry, there is no scope for the Petitioner to claim an injunction of the nature, which he claimed by the interlocutory application at Exhibit-35. The Additional District Judge, in my view, was right in holding that the application at Exhibit-35 was not maintainable. No error can be found in the decision of the learned Additional District Judge.

9. For the reasons aforesaid, there is no merit in the petition. The petition is accordingly rejected summarily.

(D.G. KARNIK, J.)